

**Endangered Species Act Section 10
Incidental Take Permit Program for Sea Turtles
In coordination with, but not substituting for 50 CFR 222.22
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This document provides guidance on implementation of the Endangered Species Act (ESA) Section 10 incidental take permit program for endangered and threatened sea turtles.

INTRODUCTION

Section 10(a)(1)(B) of the ESA authorizes the National Marine Fisheries Service (NMFS), under some circumstances, to permit the taking of fish and wildlife otherwise prohibited pursuant to Section 9 of the ESA if such taking is "incidental to, and not the purpose of carrying out otherwise lawful activities." Under NMFS regulations (50 CFR 217-222) non-federal parties may apply for a Section 10 incidental take permit to incidentally take threatened or endangered species of sea turtles. As a condition for issuance of a permit, the permit applicant must develop a conservation plan. This plan must specify actions to minimize negative impacts to the species of concern, must identify funding for mitigation efforts, illustrate that there will be no appreciable reduction in the survival of the species and contain adequate assurances that the plan will be fully implemented.

NMFS authorized incidental take permits for sea turtles would generally be for activities that often relate to the taking of individuals, such as by fishing, rather than by habitat degradation. Most marine habitat degradation is subject to Section 7 of the ESA and is not the purview of a Section 10 permit. Habitat degradation on turtle nesting beaches is the jurisdiction of the U.S. Fish and Wildlife Service, who administers the ESA for those areas.

The Assistant Administrator may issue permits to take endangered or threatened marine species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA). The information collection associated with the following application instructions is required for the purpose of obtaining such a permit. The information provided will be used to process the incidental take permit in accordance with the ESA, including the solicitation of public comments on the justification of the take of ESA-listed species incidental to proposed activities. The information provided by an applicant in accordance with these instructions is not confidential and is subject to public exposure for comments. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the address below.

WHO MAY APPLY Any non-federal entity may apply for a Section 10 incidental take permit. A non-federal entity includes, but is not limited to an individual, business, municipality, fishery organization, or state agency. State agencies, which regulate state fisheries, should apply for individual permits to cover specific fisheries that incidentally take listed species of sea turtles. Although individuals, businesses, municipalities and fishery organizations are eligible to apply for an incidental take permit, state agencies have the appropriate resources to develop conservation plans to institute actions that minimize negative impacts to the species of concern.

Individual Incidental Take Permit. If the applicant represents an individual or a single entity, such as a state or corporation, the application would be for an individual incidental take permit.

General Incidental Take Permit. If the applicant represents a group or organization whose members conduct similar activities in the same geographical area with similar impacts on endangered or threatened sea turtles, the application would be for a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity would have to have a certificate of inclusion (described later).

WHERE TO SEND THE APPLICATION

The application may be submitted electronically, if possible (either by email or by mailing a disk), but one signed original of the complete application must be sent to:

Chief, Endangered Species Division
National Marine Fisheries Service, F/PR3
1315 East-West Highway
Silver Spring, Maryland 20910
Telephone (301) 713-1401, Fax (301) 713-0376

APPLICATION REQUIREMENTS

Cover Letter

Include the Following Information:

1. Type of Permit.
 - A. Application for an Individual Incidental Take Permit under the Endangered Species Act of 1973.
 - B. Application for a General Incidental Take Permit under the Endangered Species Act of 1973.
2. Date of the application.
3. Name, address and telephone number of the applicant. If the applicant is a partnership, corporate entity or is representing a group or organization, include applicable address details.
4. Description of each species of ~~Endangered~~ or threatened sea turtle impacted by the activity, by common and scientific name; description of the status, geographical distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of each species.
5. Detailed description of the activity (fishery season):
 - A. Anticipated dates and duration of the activity.
 - B. Specific location of the activity and fishery effort in that area.
 - C. For a general incidental take application, an estimate of the total level of expected fishery effort.
 - D. Other relevant information (e.g. gear description).

Conservation Plan

NMFS regulations require that a Conservation Plan be based on the best scientific and commercial data. Accordingly, a Conservation Plan must emphasize techniques, gear-types, and general practices to mitigate takes. The Conservation Plan may involve development of new gear-types or modification of fishing practices.

Include the Following Information:

1. Anticipated impact of the activity on the listed species of sea turtle(s), including:
 - A. The estimated number of animals impacted, their geographic range and, if applicable, the subspecies or population group.

- B. Type of anticipated impact, such as capture, harassment, predation, competition for space and food, nature of injury, etc.
 - C. Effects of impact on the listed species, such as descaling, altered reproductive activities, potential for mortality, effects of repeated submergence, etc.
2. Anticipated impact of the activity on the habitat of the species and the likelihood of restoration of the affected habitat.
 3. Steps that will be taken to monitor, minimize, and mitigate such impacts, including:
 - A. Detailed monitoring plans (e.g. observer programs).
 - B. Detailed enforcement plans (e.g. monitoring Turtle Excluder Device compliance).
 - C. Specialized equipment, methods of conducting activities, or other mitigation techniques.
 - D. Detailed funding plan to implement measures taken to monitor, minimize and mitigate impacts.
 4. Alternatives to the activity considered and reasons why those alternatives are not being used.
 5. A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.
 6. Other measures the Assistant Administrator of NMFS may require as necessary or appropriate for the purposes of the plan (Section 10(a)(2)(A)).

PERMIT ISSUANCE CRITERIA

In order to issue a permit, NMFS must find that the applicant will effectively monitor the activity and institute means to minimize and mitigate the impact on sea turtles, and that the incidental taking will not reduce the likelihood of survival of the species or hinder its recovery. NMFS also requires assurance that the conservation plan will be implemented and that any other required measures will be implemented.

The following criteria are considered for issuance:

1. Status of the stock and/or species to be incidentally taken;2. Likely direct and indirect impacts of the activity on sea turtles;
3. Availability and effectiveness of monitoring and enforcement programs;
4. Use of the best available technology to minimize and mitigate impacts; and

5. Public comments received during the 30-day public notice and comment period.
6. Adequate funding for the Conservation Plan.
7. Taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

An issued permit would:

1. Require regular reporting and rights of inspection;
2. Identify species and number of animals allowed to be incidentally taken;
3. Specify the authorized method of incidental taking;
4. Require procedures for captured sea turtles (i.e. resuscitation techniques, disposal);
5. Potentially impose administrative fees;
6. Establish duration of the permit; and
7. Specify any other terms or conditions that the Assistant Administrator of NMFS identifies necessary and appropriate.

Incidental take permits are subject to the requirements of the National Environmental Policy Act. Because issuance of the permit is a Federal action, NMFS will conduct a consultation for each permit as required by section 7 of the Endangered Species Act.

CERTIFICATES OF INCLUSION

When NMFS authorizes a general incidental take permit, individuals conducting the activity covered by the general permit must obtain certificates of inclusion. For example, if NMFS issues a general incidental take permit to a fishery organization for a coastal gillnet fishery, the owner or operator of a gillnet vessel who wishes to operate under that permit must apply to NMFS for a certificate of inclusion. NMFS estimates a public reporting burden of .5 hour for each certificate of inclusion.

An application for a certificate of inclusion must include the following:

1. General incidental take permit under which the applicant wants coverage;
2. Applicant's name, address and telephone number (if the applicant is a partnership or corporate entity, then the applicable details);
3. Description of the activity the applicant wants covered under the general permit, including anticipated geographic range and season; and
4. Signed statement that the applicant has read and understood the general incidental take permit and the conservation plan, will apply with the applicable terms and conditions, and will fund the applicable measures of the conservation plan.

PERMIT MODIFICATIONS

Requests for modifications to incidental take permits must address all applicable sections of these instructions, including a detailed description of all proposed changes. Appropriate changes must also be made to the Conservation Plan. Modification requests involving an increased number of animals, additional species, an increased risk to the animals, or a significant change in the location of the activity are subject to the 30-day public review and may be granted or denied the permit modification at the discretion of the Assistant Administrator for Fisheries.

PERMIT VIOLATIONS, SUSPENSIONS, AND REVOCATIONS

If a permit or certificate holder is not complying with the terms and conditions of the permit, NMFS may suspend or revoke the permit or certificate. If a permit is revoked, then the permitted activity that incidentally takes threatened or endangered species, would lose authorization. In some cases, the state itself would be the permittee and would be in violation of the ESA in the event that individual vessels do not comply with the terms of the permit.

COORDINATION WITH SECTION 6 AGREEMENTS

NMFS anticipates that most of the Section 10 incidental take permits will address activities that occur on a state-wide basis. NMFS will coordinate activities between state Section 10 permit applications and state Section 6 cooperative agreements. Both Conservation Plans and cooperative agreements seek to establish effective mechanisms outside the federal government for conservation of listed and even non-listed species. It is possible that Conservation Plans could be incorporated into cooperative agreements of those states.